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August 14, 2003
DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: April 8, 2003

Case Number: TSO-0030

This Decision concerns the eligibility of XXXXXXX XXXX XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy Operations Office (DOE) suspended the individual's access authorization under the provisions of Part 710.^{2/} As set forth in this Decision, I have determined on the basis of the evidence and testimony presented that the individual's security clearance should not be restored.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

^{2/} On September 11, 2001, the DOE issued revisions of the Part 710 regulations, amending procedures for making final determinations of eligibility for access authorization. 66 Fed. Reg. 47061 (September 11, 2001). The revised regulations were effective immediately upon publication and govern the present Decision.

whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual was granted a security clearance by DOE as a condition of his employment with a DOE contractor. However, the DOE Office of Safeguards and Security (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on March 12, 2003, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections f and j. More specifically, the Notification Letter alleges that the individual: 1) "[d]eliberately misrepresented, falsified, or omitted significant information from . . . a personnel security interview . . . on a matter regarding eligibility for DOE access authorization," 10 C.F.R. § 710.8(f) (Criterion F); and 2) has "[b]een, or is, a user of alcohol habitually to excess or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or suffering from alcohol abuse," 10 C.F.R. § 710.8(j) (Criterion J). The bases for these findings, as stated in the Notification Letter, are summarized below.

Citing Criterion F, the Notification Letter states that the individual gave false accounts of his consumption of alcohol during a Personnel Security Interview (PSI) conducted on January 15, 2002, and during an interview conducted by the U.S. Investigations Service (USIS) on June 6, 2002. According to the Notification Letter, the individual described his alcohol consumption as minimal during the January 15, 2002 PSI, and denied abusing alcohol or using hard liquor during the subsequent USIS interview. During a second PSI conducted on August 15, 2002, however, the individual admitted giving untruthful information regarding his alcohol consumption during his previous interviews and estimated his drinking as "a case of beer a month, and a couple of fifths of vodka a week." Regarding Criterion J, the Notification Letter states that on October 1, 2002, a psychiatric evaluation of the individual was performed by a DOE consultant psychiatrist (DOE Psychiatrist) who diagnosed the individual with Alcohol Abuse, Continuous, With Dependency.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on April 8, 2003, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On April 10, 2003, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist and the Personnel Security Specialist who conducted the two PSIs with the individual. Apart from testifying on his own behalf, the individual called his supervisor, his Employee Assistance Program (EAP) counselor, and three co-workers

who are also close friends of the individual. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "Exh.".

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was granted a security clearance as a condition of his employment with a DOE contractor. On September 7, 2001, the individual was referred to his employer's medical director for evaluation, following a report received by his employer that the individual had displayed hypomanic behavior in the workplace. During this meeting, the medical director inquired about a number of matters relating to the individual's physical and mental health, including the individual's use of alcohol. The individual informed the medical director that he did not have a problem with alcohol. Nonetheless, the medical director referred the individual to his Employee Assistance Program (EAP) counselor and further contacted the individual's personal physician about the individual's use of alcohol. During a subsequent meeting with the medical director, on September 12, 2001, the individual became very agitated and raised his voice when informed that the medical director had contacted his personal physician. The medical director reportedly felt threatened by the individual's reaction and placed the individual on site access denial, with a concurrent temporary suspension of the individual's security clearance.

In January 2002, the individual was given clearance by his employer to return to work. In accordance with standard procedure, however, the individual was required to submit to a Personnel Security Interview (PSI) by DOE Security before actually resuming work. During this PSI conducted on January 15, 2002 (PSI I), the individual was asked about his consumption of alcohol during the preceding six months, beginning July 2001. At that time, the individual described his consumption of alcohol as minimal, estimating that he consumed six beers per month and usually no more than two beers on one occasion. Prior to July 2001, the individual stated that he drank more heavily, estimating that he drank a case of beer a month and was intoxicated once or twice a week. The individual explained that he reduced his drinking in July 2001, when he began taking a new medication to control his depression, a condition for which he has been treated for several years. Upon receiving this information, the Personnel Security Specialist recommended that the individual be allowed to return to work but also that a background investigation of the individual be conducted.

The individual was interviewed on June 6, 2002, by an investigator of the U.S. Investigations Service (USIS). During the USIS interview, the individual denied abusing alcohol and stated that during the preceding ten years, he typically drank two to three twelve-ounce beers a week and that he did not drink hard liquor. However, information regarding the individual's use of alcohol obtained by the USIS from independent sources conflicted with representations made by the individual during PSI I and the USIS interview. Upon receiving the USIS investigation report, DOE Security made a determination to conduct a second PSI with the individual.

During the second PSI, conducted on August 15, 2002 (PSI II), the individual stated that in the preceding two years he consumed alcohol four to five times weekly, consisting of three beers on weekdays and five beers on weekends, and indicated that he regularly drank vodka. At one juncture during PSI II, the individual estimated that he consumed a case of beer a month and a couple of fifths of vodka a week. The individual later revised the amount to one fifth of vodka a week, and two to three cases (30-packs) of light beer per month. The individual stated that he continued drinking at this level despite warnings from his psychiatrist that he should not drink in combination with anti-depression medications he takes (Depakote, Paxil and Trazadone). The individual conceded that he was untruthful about his alcohol consumption during PSI I and the USIS interview because he was fearful about losing his security clearance.

Subsequent to PSI II, the individual was referred to the DOE Psychiatrist, who examined the individual on October 1, 2002. In his report, the DOE Psychiatrist diagnosed the individual with Bipolar II Disorder, Depressed, and Alcohol Abuse, Continuous with Dependency. The DOE Psychiatrist states in his report that the Bipolar condition does not cause a defect in the individual's judgment and reliability as long as he continues under treatment with the proper medications. However, the DOE Psychiatrist's report indicates that the individual's alcohol condition clearly affects his judgment, as demonstrated by the fact that he continued to drink heavily despite knowing that use of any alcohol was prohibited when taking his anti-depression medication. The DOE Psychiatrist further found that the individual was without adequate evidence of reformation and rehabilitation from his alcohol use.

In January 2003, the individual made the decision to stop drinking, and went to his EAP counselor for guidance in achieving rehabilitation. The EAP counselor began meeting with the individual every two to three weeks, and referred the individual to an alcohol treatment program (Treatment Center). The Treatment Center diagnosed the individual with Alcohol Dependence on the basis of information supplied by the individual. During the four-week period February 2 through February 27, 2003, the individual participated in the Treatment Center's intensive outpatient program which involved therapy sessions and urine sampling four times per week. The Discharge Summary provided by the Treatment Center states that the individual successfully

completed his treatment program. The Discharge Summary further notes, however, that the individual elected not to follow through with the program recommendation that he continue in weekly therapy sessions at the Treatment Center. The individual instead elected to begin active involvement in Alcohol Anonymous (AA), and has attended on an average of five to six AA meetings per week since February 2003. The individual also has continued seeing the EAP counselor. The EAP counselor reports that their discussions focus primarily on relapse prevention issues.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See *Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my determination that the individual's access authorization should not be restored since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the

national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria F; Falsification

The individual now freely admits that he intentionally gave inaccurate information during PSI I in January 2002, and during the USIS interview in June 2002, out of concern for losing his security clearance. Tr. at 22, 163-65. According to the individual, “I knew I couldn’t drink and have a clearance . . . [a]nd I wanted to drink.” Tr. at 163-64. During PSI II in August 2002, the individual attempted to more accurately approximate his level of alcohol consumption since he realized that the USIS background investigation had undoubtedly uncovered information that conflicted with his prior interviews. Tr. at 164. The individual stated at the hearing, however, that although he described an excessive level of drinking during PSI II (i.e., a case of beer a month, and a couple of fifths of vodka a week), that again was probably not accurate. The individual stated: “[F]rankly, I don’t know how much I was drinking . . . I would probably put it at about a little over two half gallons of diluted [forty proof] vodka a week.” Tr. at 165. It is also apparent that the individual was not totally honest concerning his drinking during his interview with the DOE Psychiatrist.^{3/}

At the hearing, the Personnel Security Specialist described the basis for DOE Security’s concern when an individual intentionally provides false information during security interviews. Such deliberate deception raises serious issues with regard to the individual’s honesty, reliability and trustworthiness. Tr. at 35. As observed in similar cases, the DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. See, e.g., *Personnel Security Hearing*, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,515 (1995); *Personnel Security Hearing*, Case No. VSO-0281, 27 DOE ¶ 82,821 at 85,915 (1999), *aff’d*, 27 DOE ¶ 83,030 (2000).

Under the circumstances of this case, I find that DOE Security properly invoked Criterion F. In mitigation of the legitimate security concerns, the individual asserts that he was in a state of denial with regard to his alcoholism and thus his deliberate minimization of his alcohol consumption was a symptom of his mental condition. Tr. at 166, 168. The DOE Psychiatrist corroborated the individual’s statement in his

^{3/} For instance, the report of the DOE Psychiatrist states that “[the individual] denies any blackouts.” Exh. 5 at 5. However, the Discharge Summary issued by the Treatment Center lists among the factors supporting its diagnosis of Alcohol Dependence that the individual admitted to having experienced blackouts. Exh. 6 at 1. The DOE Psychiatrist further states in his report that “I do not believe the falsifications were just related to his denial of his alcoholism. There definitely seemed to be an element of deliberate deception in terms of his insecurity about maintaining his access authorization.” Exh. 5 at 8.

report, stating that “[o]rdinarily in alcoholism, the denial and concealment is automatic and occurs in conversation to deceive others and oneself about the extent of one’s drinking.” Exh. 5 at 11. I note further that character witnesses called by the individual, including his supervisor, close friends and co-workers, uniformly testified that the individual is honest and trustworthy. Tr. at 114, 123, 130, 142. All of these witnesses have known the individual for many years and I am therefore persuaded that the individual is generally an honest person and his falsification during his security interviews was symptomatic of his alcohol dependence.^{4/} Because of his alcohol dependence, however, I conclude that the individual has failed to fully mitigate the concerns of DOE Security. The individual has made considerable progress in confronting his alcoholism and is now able to openly discuss his past alcohol consumption. See Tr. at 159-61, 165-66. Nonetheless, I find for the reasons set forth below that the individual has failed to achieve adequate rehabilitation from his alcohol dependence, and thus the root cause for his dishonesty during the security interviews remains.

B. Criterion J; Alcohol Use

The DOE Psychiatrist’s diagnosis of Alcohol Abuse, Continuous With Dependency, regarding the individual is amply supported by the record, and corroborated by the diagnosis of the Treatment Center attended by the individual.^{5/} On the basis of the report and testimony of the DOE Psychiatrist and the individual’s admitted history of alcohol abuse, I find that DOE Security properly invoked Criterion J in suspending the individual’s security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82, 803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82, 771 (1995) (affirmed by OSA, 1996); *Personnel Security*

^{4/} While the DOE Psychiatrist acknowledged that the individual’s lying about his drinking during the security interviews can be attributed to his alcoholism, the DOE Psychiatrist further opined in his report that “[the individual] has gone beyond this, in terms of lying about many non-alcohol related topics.” Exh. 5 at 11. When questioned at the hearing, however, the DOE Psychiatrist was unable to provide me with any concrete examples of the individual lying about matters other than those related to the individual’s consumption of alcohol. See Tr. at 82-84.

^{5/} The Discharge Summary of the Treatment Center describes a long list of indicators supporting its diagnosis of Alcohol Dependence, including that the individual “continued use despite adverse consequences, including marriage problems, work problems, blackouts, emotional problems . . . , increased tolerance, withdrawal symptoms/using to avoid withdrawal symptoms, substance taken in larger amounts than planned, persistent desire or unsuccessful attempts to cut down or quit using.” Exh. 6 at 1.

Hearing, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). In the present case, the Personnel Security Specialist expressed the concerns of DOE Security during his testimony, observing that the individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. Tr. at 35. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation to mitigate the security concerns of DOE.

The individual has made significant strides toward achieving rehabilitation. The individual has been abstinent since January 2003, and in February 2003, the individual successfully completed an intensive outpatient program which involved therapy sessions and urine sampling four times per week over a four-week period. Since that time, the individual has attended five to six AA meetings per week and consults with his EAP counselor every two to three weeks. The EAP counselor is supportive of the individual and believes the individual has made considerable progress in combating his alcoholism. Tr. at 105-06.^{6/}

However, the DOE Psychiatrist described the individual as having been "quite dependent on alcohol." Tr. at 55. The DOE Psychiatrist therefore recommended that, in order to achieve rehabilitation, the individual not only have completed a reputable treatment program and remained in aftercare (AA), but "maintained at least a year, preferably two years, of abstinence." *Id.* The EAP counselor voiced a similar opinion. While the EAP counselor commended the individual for the progress he has made, she recommended that the individual "be put on a two-year contract that would require going to AA meetings, remaining abstinent, meeting with EAP on a monthly basis to monitor your attendance at AA [and] random screenings." Tr. at 109. Thus, I find that the individual is still in a relatively early stage of the program of rehabilitation recommended for the individual, with only six months of sustained abstinence at the time of the hearing. Consequently, the individual has not yet overcome the security concerns associated with his alcohol dependence, and I cannot recommend restoring the individual's security clearance at this time. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE

^{6/} The individual was initially referred to the EAP counselor upon returning to work in January 2002, and met with the EAP counselor for nine months, from January 2002 to September 2002. The EAP counselor testified that the individual was not truthful with her concerning his alcohol consumption during this time period, and denied ever drinking more than two to three beers a day. Tr. at 99; Exh. 7. However, the individual voluntarily returned to the EAP counselor in January 2003. According to the EAP counselor, the individual stated that he had stopped drinking and openly discussed his alcohol problem. Tr. at 106. It was at this time that the EAP counselor referred the individual to the Treatment Center.

¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(f) and (j) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to mitigate the legitimate security concerns associated with these findings. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: August 14, 2003t